

EXCEPTION ORIG



RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2001 APR 18 P 3: 56

Arizona Corporation Commission

William Mundell
Commissioner-Chairman
Jim Irvin
Commissioner
Marc Spitzer
Commissioner

DOCKETED

APR 18 2001

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF ARIZONA DIAL TONE, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY AND FOR DETERMINATION
THAT SERVICES OF APPLICANT ARE
COMPETITIVE

DOCKET NO. T-03608A-98-0442

APPLICANT'S EXCEPTIONS TO
REVISED STAFF REPORT

Applicant, Arizona Dial Tone, Inc., by and through undersigned counsel, hereby submits the following exceptions to the revised version of the Staff Report filed April 5, 2001. Arizona Dial Tone believes that a fair value rate base determination should not apply to the services of a pure reseller of local exchange carrier ("LEC") services. Therefore, its Application for a Certificate of Convenience and Necessity should be granted and its tariffs should be approved on a permanent basis rather than an interim basis as recommended in the revised Staff Report. Arizona Dial Tone agrees with Staff that this matter may be approved without a hearing pursuant to A.R.S. § 40-282.

The Applicant is not a facilities-based provider of local exchange carrier services, but instead is a pure reseller of services provided by other facilities-based local exchange carriers. The Applicant agrees with the statements in the revised Staff Report at page 4 regarding the competitive nature of the market for these services and the lack of any kind of market power what so ever being held by Arizona Dial Tone. Arizona Dial Tone is not a monopoly provider of service nor does it control any significant portion of the telecommunications market.

However, Staff has recommended that Arizona Dial Tone's Application be granted for a period of eighteen months after which Arizona Dial Tone would be required to submit certain

1 additional financial information in order to determine a fair value rate base for its services which
2 would then be used for the minimum rates that could be charged. Arizona Dial Tone believes that
3 a fair value finding is not applicable to its services under these circumstances, and it filed
4 objections to the Staff's request for this information. The income requirements of a pure reseller
5 of LEC services is not proportional to the plant and equipment owned by the reseller. Instead, the
6 vast majority of the plant and equipment that is used to provide the telecommunications services
7 to the customer is owned by the facilities-based LEC, not the reseller. The return on this plant
8 and equipment owned by the facilities-based LEC is embedded in the wholesale rates charged to
9 the reseller by the facilities-based LEC. A pure reseller does not add substantial plant and
10 equipment to the equation. Instead, a pure reseller adds services and assumes risks that amount
11 to costs avoided by the facilities-based LEC. In order to be competitive in the marketplace, a pure
12 reseller works within the margin created by the costs avoided by the facilities-based LEC. These
13 costs include such things as billing and collection, bad debts, repairs and maintenance, orders,
14 advertising, yellow pages, and so on.

15 The Applicant believes that any interpretation of the Arizona Court of Appeals' Opinion
16 in US West Communications Inc. v. Arizona Corporation Commission, 198 Ariz. 208, 8 P.3d 396
17 (2000)(petition for review pending), as requiring Arizona Dial Tone to undergo a determination
18 of fair value rate base in the circumstances of this Application is incorrect. The requirement for
19 a fair value rate base determination found in the Arizona Constitution Article XV, Section 14 and
20 other state law must not be applied to pure resellers like Arizona Dial Tone. Considering the
21 doubtful usefulness of a fair value rate based determination in these circumstances and the cost and
22 complexity of such a determination for a pure reseller like Arizona Dial Tone, a requirement to
23 determine a fair value rate base is overly burdensome and creates unreasonable and prohibitive
24 barriers to entry into the telecommunications market and is otherwise unlawful under the
25 competition provisions of the Telecommunications Act of 1996.

26 Therefore, Arizona Dial Tone requests that the Staff's recommended conditions of approval

1 numbers 2 and 3 set forth on page 6 of the revised Staff Report regarding the Applicant supplying
2 additional information listed therein for a fair value finding within eighteen months be denied.
3 Alternatively, Arizona Dial Tone requests that the time for submitting the additional information
4 be extended to three years instead of the eighteen months recommended in the revised Staff
5 Report. This additional time will allow for the current pending legal issues to be resolved, subject
6 to Arizona Dial Tone's continuing objections stated herein.

7 RESPECTFULLY SUBMITTED this 18th day of April, 2001

8 MORRILL & ARONSON, P.L.C.

9
10 By William D. Cleaveland
11 Martin A. Aronson
12 William D. Cleaveland
One East Camelback, Suite 340
Phoenix, AZ 85012
Attorneys for Arizona Dial Tone, Inc.

13 The Original and 10 Copies of
14 the foregoing were filed with
DOCKET CONTROL this
15 18th day of April, 2001
and a COPY of the foregoing
was MAILED this 18th day of
16 April, 2001, to:

17 Christopher C. Kempley, Esq.
18 Assistant Chief Counsel
Legal Division
19 Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

20 Deborah Scott
21 Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
22 Phoenix, AZ 85007

23 Mr. Anthony Gatto
24 Arizona Corporation Commission
1200 West Washington Street
25 Phoenix, AZ 85007

26 William D. Cleaveland